

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 03-530-A
)	
RUSSELL A. JOHNSON, <i>et al.</i>)	

STATEMENT OF FACTS

The United States and the defendant agree that had this matter proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

1. Defendant RUSSELL A. JOHNSON was a physician residing in the Commonwealth of Virginia, licensed in Virginia and Pennsylvania, and specializing in internal and pulmonary medicine. He also held a Controlled Substances Registration Certificate issued by the Drug Enforcement Administration. During the period October 1999 through August 2000, JOHNSON participated in a conspiracy to sell via the Internet, controlled substances and other prescription drugs to consumers in the United States and throughout the world. Through these methods, the defendant and his co-conspirators mass-marketed their drugs and services. In furtherance of this conspiracy, JOHNSON authorized his name to appear on vials of drugs that were distributed and dispensed to customers by other individuals and entities with whom he conspired. JOHNSON authorized the issuance of at least 7,792 prescriptions, of which at least 6,035 prescriptions were for controlled substances. This resulted in the distribution and dispensing of at least 15,060 pills of Schedule III substances and at least 241,660 pills of Schedule IV substances to customers from a pharmacy located in Roanoke, Virginia, and a pharmacy located in Midlothian, Virginia, within the Eastern District of Virginia. During this

time period, JOHNSON was aware that several other physician co-conspirators were also authorizing the distribution and dispensing of controlled substances to customers of other websites controlled by his co-conspirators. The Schedule III substance distributed and dispensed was phendimetrazine, a stimulant for weight loss, sold by its brand name Bontril. The Schedule IV substances distributed and dispensed were phentermine, sold generically and by the brand names Adipex and Ionamin, and sibutramine hydrochloride, sold by the brand name Meridia. These drugs are indicated for weight loss.

2. Co-conspirators Vineet K. Chhabra and Sunil K. Sethi hired JOHNSON to authorize the distribution and dispensing of controlled substances to customers who ordered drugs over the Internet on the basis of website order forms. Chhabra owned and operated several websites that advertised various controlled substances and other prescription drugs for sale to domestic and international customers. Included among the controlled substances offered to customers were drugs commonly known as Bontril, Ionamin, Phentermine, Adipex, and Meridia. Sethi co-owned one of the websites for which JOHNSON authorized the distributing and dispensing of controlled substances. Sethi also owned and operated a pharmacy through which the prescriptions JOHNSON authorized were distributed and dispensed.

3. Customers who ordered drugs from the co-conspirators' websites were not required to provide a prescription before receiving the controlled substances. Instead, customers filled out an online order form and chose the type, quantity, and dosage of controlled substance the customer wished to purchase. Customers also answered questions about their past medical conditions and current medications. In the case of the weight-loss medications approved by Johnson, customers provided information concerning their height and weight, so that a body

mass index could be generated. Many questions had default answers provided that "qualified" customers to receive drugs. Customers had the option of changing the default answers to provide other information.

4. JOHNSON reviewed the questionnaires submitted to him. In some cases he requested that additional information be obtained from the customer. In other cases he disapproved the drug for the customer. In most cases he approved the drugs for the customer.

5. Under the Controlled Substances Act and its implementing regulations, for a prescription to be valid, a prescription had to be issued for a legitimate medical purpose by an individual acting in the usual course of the professional practice. 21 C.F.R. § 1306.04.

6. The prescriptions authorized by JOHNSON were not valid because he did not establish a doctor-patient relationship. Other than the questionnaires, JOHNSON did not have any contact with the persons ordering the medication. He performed no mental or physical examination, did not take a patient history or perform any diagnostic or laboratory testing, did not check the accuracy of the information customers provided (including their identities, ages, and qualifying medical conditions, such as weight), and did not monitor, or provide any means to monitor, medication response, weight loss or weight gain. He did not seek information concerning the amounts of drugs his co-conspirators had authorized to be distributed and/or dispensed to particular customers. Instead, the controlled substances were distributed and dispensed for other than legitimate medical purposes and not in the usual course of professional practice. As such, JOHNSON's and his co-conspirators' actions violated the Controlled Substances Act.

7. As a result of the procedures used in this Internet drug distribution business, JOHNSON authorized the dispensing and distribution of excessive quantities of controlled substances and other prescription drugs to many customers on a regular basis.

8. JOHNSON was paid by co-conspirator Sethi for authorizing the distribution and dispensing of controlled substances ordered by the Internet customers.

9. JOHNSON used a special skill, his medical training, to facilitate the commission of this offense. He was not an organizer or leader of the conspiracy.

Respectfully submitted,

PAUL J. McNULTY
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After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, RUSSELL A. JOHNSON, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

RUSSELL A. JOHNSON
Defendant

I am RUSSELL A. JOHNSON's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Joseph W. Kaestner, Esq.
Counsel for Defendant